

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 648 OF 2016

Sahebrao Kondbarao Khatade .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

WITH
WRIT PETITION NO. 649 OF 2016

Prakash Shivshankar Narkhede .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

WITH
WRIT PETITION NO. 650 OF 2016

Digamber Bhavanji Chavan .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

WITH
WRIT PETITION NO. 653 OF 2016

Kishan Bhagwanrao Dharmure .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

WITH
WRIT PETITION NO. 656 OF 2016

M. Salahuddin Sayeeduddin .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

WITH
WRIT PETITION NO. 658 OF 2016

Pandurang Navsaji Ingole .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

Shri V. G. Sakolkar, Advocate for the Petitioner in all matters.

Shri S. G. Karlekar, A.G.P. for Respondent No. 1 in all matters.

Shri Nitin S. Kadam, Advocate for Respondent Nos. 2 and 3 in all matters.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 12th July, 2018

PER COURT :

1. The petitioners assail the communications seeking recovery and the recovery made from the retiral benefits. According to learned counsel for the petitioners the petitioners are working as Class - III employees of the respondent. The pay fixation was done and eventually the benefit was given with retrospective effect. After the retirement of the petitioners, the respondents have done re-fixation and according to the respondents excess amount has been paid to the petitioners. The same is sought to be recovered. According to the learned counsel hardship will be

caused to the petitioners. Even in equity they are entitled to the protection of the said amount. The learned counsel relies on the Judgment of the Apex Court in a case of State of Punjab and others Vs. Rafiq Masih (White Washer) reported in 2015 (4) SCC 334.

2. Mr. Kadam, learned counsel for respondent no. 2 – The Chief Executive Officer, Zilla Parishad, Nanded and respondent no. 3 – The Chief Accounts & Finance Officer, Zilla Parishad, Nanded submits that under erroneous belief the pay fixation was done. The petitioners have given undertakings at the time that if it is found excess amount is paid they would refund the same. In view of the undertakings given, the petitioners does not have *locus standi* to dispute the recovery. The learned counsel relies on the Judgment of the Apex Court in a case of High Court of Punjab and Haryana and others Vs. Jagdev Singh in Civil Appeal No. 3500 of 2006 dated 29th July, 2016.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. It is not disputed by the respondents that the petitioners were working as Class - III employees with the respondent and the pay fixation was done some times in the year - 2006. It is also not disputed that all these petitioners have retired from service on attaining the age of superannuation and from their retiral benefits the amount is sought to be recovered. The recovery is made in respect of the amount paid five years prior to the recovery. It would be inequitable to claim recovery from the retiral benefits of Class - III employees. Certainly hardship would be caused to them. The Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer)**(*Supra*) has laid down following five principles -

“(i) Recovery from employees belonging to Class-III and Class -IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The case of the petitioners falls within the ambit of the said principles. The Judgment of the Apex Court in a case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh** (*Supra*) was in respect of Class - I employee.

5. Considering the above, the impugned orders of recovery are quashed and set aside. The respondent shall repay the amount recovered from the petitioners on account of wrong pay fixation, expeditiously and preferably within a period of three (3) months.

6. Writ Petitions accordingly stand disposed of.
No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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